

Schatz



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Standard Manufacturing Company, Inc.

File: B-236814

Date: January 4, 1990

DIGEST

1. Protest that awardee lacks the capacity to meet the required delivery schedule challenges the responsibility of the awardee; our Office will not review an agency's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of the contracting officials or that definitive responsibility criteria have not been met.
2. Whether an offeror will actually deliver a product in compliance with specifications is a matter of contract administration, which is the responsibility of the contracting agency and not within the purview of the General Accounting Office's bid protest function.
3. Protester has no standing to claim an error in a competitor's offer; rather, it is the responsibility of the contracting parties--the government and the offeror in line for award--to assert rights and present the necessary evidence to resolve mistake questions.

DECISION

Standard Manufacturing Company, Inc., protests the Department of the Air Force's award of a requirements contract to Hydraulics International, Inc., under request for proposals (RFP) No. F41608-89-R-1252, a total small business set-aside for MJ-IB aerial store lift trucks. We deny the protest in part and dismiss it in part.

The RFP provided for award to be made to the low, responsible offeror. Four offers were received by the July 31 closing date. After the apparent low offeror was determined to be nonresponsible, Hydraulics was found to be the low, responsible offeror. Standard thereupon filed this protest with our Office, alleging that the award was improper for several reasons.

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First, Standard alleges that Hydraulics has not delivered lift trucks to the agency on time under previous Air Force contracts and will not do so under this contract, because Hydraulics does not have the capacity to meet the delivery schedule. We reject these arguments. Hydraulics agreed in its proposal to comply with the delivery schedule in the RFP, and nothing on the face of the offer took exception to the schedule or other RFP requirements; the offer therefore was technically acceptable. AJK Molded Prod., Inc., B-229619, Feb. 1, 1988, 88-1 CPD ¶ 96. The Air Force specifically determined, moreover, that Hydraulics has the capacity to deliver the trucks in accordance with the delivery schedule, and reports that the firm in fact has delivered ahead of schedule under previous contracts.

Whether Hydraulics is capable of meeting its agreement to deliver the trucks in accordance with the delivery schedule is a matter of responsibility. In awarding Hydraulics the contract, the agency necessarily determined that Hydraulics was a responsible prospective contractor. Universal Shipping Co., Inc., B-223905.2, Apr. 20, 1987, 87-1 CPD ¶ 424. We will not review such affirmative determinations of responsibility absent a showing of possible fraud or bad faith on the part of the contracting officials or that definitive responsibility criteria in the solicitation have not been met. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1989); AJK Molded Prod., Inc., B-229619, supra. Standard has not alleged any of these exceptions, and our Office therefore will not review the responsibility determination.

Standard also contends that Hydraulics supplied lift trucks under previous Air Force contracts that did not conform to the specification requirement for trucks that are nuclear certified and expresses concern that the agency will again waive the specification. Standard likewise expresses concern that the agency will waive a new solicitation requirement for a centering mechanism to control vehicle motion; according to the protester, only its mechanism has so far been approved by the agency and Hydraulics has not asked it for a quotation. At the very least, Standard believes Hydraulics must have made a mistake in its bid, not realizing the need to procure the mechanism from Standard.

These arguments also are without merit. Standard has presented no evidence in support of its claim that the agency previously has waived material contract requirements for Hydraulics, or that the agency accepted Hydraulics' proposal here with the intention of waiving any requirements. At the same time, the Air Force reports that,

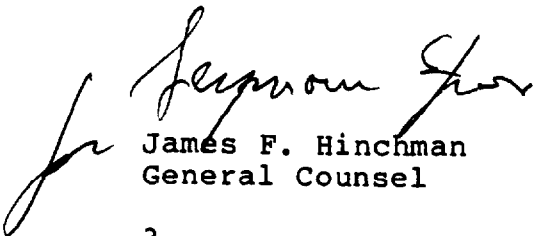
contrary to Standard's assertions, Hydraulics has previously provided conforming trucks and maintains it therefore had no reason to believe that Hydraulics would furnish trucks without nuclear certification or the required centering mechanism. The Air Force states it has not waived requirements for Hydraulics under prior contracts and does not intend to waive any under the current contract.

In any case, as indicated above, Hydraulics' proposal was acceptable because it agreed to furnish trucks in accordance with all RFP requirements, without exception. Whether an offeror actually delivers a product in accordance with the specifications is a matter of contract administration, which is the responsibility of the contracting agency and not within the purview of our bid protest function. Janke and Co., Inc., B-210776, May 19, 1983, 83-1 CPD ¶ 543. This is the case notwithstanding Standard's alleged current monopoly on the supply of an approved centering mechanism; nothing in the record indicates that Standard will not quote the centering mechanism to Hydraulics if asked, and the record does not establish that other, acceptable centering mechanisms will not be qualified in the future.

As for the allegation of a possible mistake in Hydraulics' offer, we have previously recognized that a protester has no standing to claim an error in a competitor's offer, since it is the responsibility of the contracting parties--the government and the offeror in line for award--to assert rights and present the necessary evidence to resolve mistake questions. Esilux Corp., B-234689, June 8, 1989, 89-1 CPD ¶ 538. Here, neither contracting party claims a mistake.

Finally, Standard speculates that the Air Force incorrectly evaluated offerors' prices. We have reviewed this aspect of the evaluation, and although it appears the Air Force did in fact make a minor error in calculating Standard's weighted, unit prices, mistakenly calculated as \$26,139.43 that error had no effect on the award decision. In this regard, the agency made no mistakes in calculating Hydraulics' prices, and Hydraulics' evaluated unit price of \$23,339 remains lower than Standard's corrected unit price of \$26,092.76.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel